

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2005-1223-PST-E TCEQ ID: RN104557921 CASE NO.: 26124
RESPONDENT NAME: NELCO DISTRIBUTING COMPANY DBA NELCO CORNER

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1045 South State Highway 359, Mathis, San Patricio County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired July 6, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Mr. Barham A. Richard Litigation Division, MC 175, (512) 239-0107 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, Waste Enforcement Section, MC R-4, (817) 588-5890</p> <p>TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106</p> <p>Respondent: Mr. John R. Nelson, President, Nelco Distributing Company dba Nelco Corner, P.O. Box 687, Mathis, Texas 78368</p> <p>Respondent's Authorized Representative: Ms. Lisa O'Brien, Power of Attorney for John R. Nelson, P.O. Box 954, Mathis, Texas 78368</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 31, 2005</p> <p>Date of NOE Relating to this Case: July 1, 2005</p> <p>Background Facts: The EDP RP was filed December 30, 2005, and mailed to the Respondent via certified mail and via first-class mail, postage pre-paid. According to the return receipt "green card," the Respondent received notice of the EDP RP on January 3, 2006. The Respondent failed to file an answer, and a default order was set on the August 9, 2006, agenda. Immediately prior to the August 2006 agenda the Respondent filed an answer and requested an ability-to-pay analysis. The Financial Administration Division determined on February 11, 2008, that the Respondent was financially able to pay the proposed penalty amount, and the case was referred to SOAH. Hearings were convened on January 15, 2009, and May 14, 2009. The Respondent failed to appear at either hearing, and the matter was remanded to the Executive Director for default proceedings.</p> <p>Current Compliance Status: The Respondent no longer owns or operates the Facility. The Respondent owes \$7,268.82 in past-due fees.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of UST systems [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. Failed to pay UST fees for fiscal years 2001 through 2005, and AST fees for 2003 through 2005 [30 TEX. ADMIN. CODE § 334.22(a) and 334.128(a), and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$4,200</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$4,200</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>The Executive Director recognizes that the Respondent no longer owns or operates the Facility as of December 13, 2007.</p> <p>Ordering Provisions: The Respondent shall undertake the following:</p> <ol style="list-style-type: none"> Immediately, submit payment for all past-due fees, including associated penalties and interest. Within 30 days, submit documentation certifying compliance with the ordering provision above.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	05-Jul-2005	Screening	14-Jul-2005	EPA Due	
	PCW	02-Oct-2005				

RESPONDENT/FACILITY INFORMATION	
Respondent	Nelco Distributing Company dba Nelco Corner
Reg. Ent. Ref. No.	RN104557921
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26124	No. of Violations	2
Docket No.	2005-1223-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **Subtotals 2, 3, & 7** \$200

5% Enhancement

Notes

The penalty was enhanced due to an NOV with the same or similar type of violations.

Culpability **Subtotal 4** \$0

No

0% Enhancement

Notes

The respondent does not meet the culpability criteria.

Good Faith Effort to Comply **Subtotal 5** \$0

0% Reduction

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with a small x)

Notes

The respondent is not yet in compliance.

Economic Benefit **Subtotal 6** \$0

0% Enhancement*

Total EB Amounts \$2,730

*Capped at the Total EB \$ Amount

Approx. Cost of Compliance \$2,600

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$4,200

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$4,200

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$4,200

DEFERRAL **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended because the respondent did not settle in a timely manner.

PAYABLE PENALTY \$4,200

Screening Date 14-Jul-2005**Docket No.** 2005-1223-PST-E**PCW****Respondent** Nelco Distributing Company dba Nelco Corner

Policy Revision 2 (September 2002)

Case ID No. 26124

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104557921**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Jorge Ibarra, P.E.**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%>> **Repeat Violator (Subtotal 3)**No **Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**Average Performer **Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary****Compliance History Notes**

The penalty was enhanced due to an NOV with the same or similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 14-Jul-2005**Docket No.** 2005-1223-PST-E**PCW****Respondent** Nelco Distributing Company dba Nelco Corner

Policy Revision 2 (September 2002)

Case ID No. 26124

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104557921**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Jorge Ibarra, P.E.**Violation Number** 1**Primary Rule Cite(s)** 30 Tex. Admin. Code § 37.815(a) and (b)**Secondary Rule Cite(s)****Violation Description**

Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks (USTs).

Base Penalty \$10,000>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment -\$9,000**Base Penalty Subtotal** \$1,000**Violation Events****Number of Violation Events** 4

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$4,000

Four single events are recommended, one per tank.

Economic Benefit (EB) for this violation**Statutory Limit Test****Estimated EB Amount** \$2,730**Violation Final Penalty Total** \$4,200**This violation Final Assessed Penalty (adjusted for limits)** \$4,200

Economic Benefit Worksheet**Respondent** Nelco Distributing Company dba Nelco Corner**Case ID No.** 26124**Reg. Ent. Reference No.** RN104557921**Media [Statute]** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$2,600	31-May-2004	31-May-2005	1.0	\$130	\$2,600	\$2,730
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the petroleum USTs for the 12 month period preceding the record review of May 31, 2005.

Approx. Cost of Compliance **\$2,600****TOTAL** **\$2,730**

Screening Date 14-Jul-2005	Docket No. 2005-1223-PST-E	PCW
Respondent Nelco Distributing Company dba Nelco Corner	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26124	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN104557921		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Jorge Ibarra, P.E.		
Violation Number	<div style="border: 1px solid black; text-align: center;">2</div>	
Primary Rule Cite(s)	<div style="border: 1px solid black; text-align: center;">30 Tex. Admin. Code §§ 334.22(a) and 334.128(a)</div>	
Secondary Rule Cite(s)	<div style="border: 1px solid black; text-align: center;">Tex. Water Code § 5.702</div>	
Violation Description	<div style="border: 1px solid black; padding: 5px;">Failure to pay UST fees for fiscal years (FYs) 2001, 2002, 2003, 2004, and 2005 and aboveground storage tank (AST) fees for FYs 2003, 2004, and 2005 and associated late fees.</div>	
Base Penalty		<div style="border: 1px solid black; text-align: right;">\$10,000</div>
>> Environmental, Property and Human Health Matrix		
Harm		
Release	Major	Moderate
Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Percent		<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
>> Programmatic Matrix		
Falsification	Major	Moderate
<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Percent		<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Matrix Notes	<div style="border: 1px solid black; padding: 5px; text-align: center;">No penalty is recommended because penalty and interest will be assessed at the next billing.</div>	
Adjustment		<div style="border: 1px solid black; text-align: right;">-\$10,000</div>
Base Penalty Subtotal		<div style="border: 1px solid black; text-align: right;">\$0</div>
Violation Events		
Number of Violation Events <div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
mark only one use a small x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
Violation Base Penalty		<div style="border: 1px solid black; text-align: right;">\$0</div>
Economic Benefit (EB) for this violation		Statutory Limit Test
Estimated EB Amount	<div style="border: 1px solid black; text-align: right;">\$0</div>	Violation Final Penalty Total <div style="border: 1px solid black; text-align: right;">\$0</div>
This violation Final Assessed Penalty (adjusted for limits)		<div style="border: 1px solid black; text-align: right;">\$0</div>

Economic Benefit Worksheet**Respondent** Nelco Distributing Company dba Nelco Corner**Case ID No.** 26124**Reg. Ent. Reference No.** RN104557921**Media [Statute]** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$0****TOTAL** **\$0**

Compliance History

Customer/Respondent/Owner-Operator:	CN601012024	Nelco Distributing Co.	Classification: AVERAGE	Rating: 2.44
Regulated Entity:	RN104557921	NELCO CORNER	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	28529
Location:	1045 S STATE HIGHWAY 359, MATHIS, TX, 78368		Rating Date: 9/1/2004 Repeat Violator: NO	
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	July 15, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 13, 2000 to July 13, 2005			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lawrence DeRoche Phone: (512) 239-1165

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 1 07/01/2005 (394186)
 2 02/25/2003 (379278)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 02/25/2003 (379278)
 Self Report? NO
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
 30 TAC Chapter 37, SubChapter I 37.815(b)[G]
 Description: Failure to provide acceptable Financial Assurance.

Classification: Moderate

F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.
N/A

Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NELCO DISTRIBUTING
COMPANY DBA NELCO
CORNER;
RN104557921**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2005-1223-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Nelco Distributing Company dba Nelco Corner ("Nelco").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Nelco owned and operated a convenience store with retail sales of gasoline located at 1045 South State Highway 359 in Mathis, San Patricio County, Texas (the "Facility").
2. Nelco's four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Nelco's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on May 31, 2005, a TCEQ Financial Analyst documented that Nelco:
 - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of UST systems. Specifically, Nelco failed to demonstrate acceptable financial assurance from November 19, 2002 until the date that the Facility was sold; and

- b. Failed to pay UST fees for Fiscal years 2001, 2002, 2003, 2004, and 2005, and above ground storage tank fees for 2003, 2004, and 2005.
4. Nelco received notice of the violations on or about July 6, 2005.
5. The Executive Director recognizes that as of December 13, 2007 Nelco no longer owns or operates the Facility.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Nelco Distributing Company dba Nelco Corner" (the "EDPRP") in the TCEQ Chief Clerk's office on December 30, 2005.
7. By letter dated December 30, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Nelco with notice of the EDPRP. According to the return receipt "green card," Nelco received notice of the EDPRP on January 3, 2006, as evidenced by the signature on the card.
8. Nelco filed a response to the EDPRP on July 27, 2006, and, pursuant to 30 TEX. ADMIN. CODE § 70.109, the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 28, 2008.
9. On November 17, 2008, the TCEQ Chief Clerk mailed the notice of the January 15, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Nelco. Due to an error with the certified mail return receipt "green card", the Executive Director was unable to verify that Nelco received notice of the hearing.
10. On January 15, 2009, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Nelco failed to show. The ALJ, through Order No. 1 remanded the case so that proper service could be achieved.
11. On March 11, 2009, the TCEQ Chief Clerk mailed the notice of the May 14, 2009 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Nelco. As indicated by the return receipt "green card", Nelco received notice of the preliminary hearing on March 20, 2009.
12. On May 14, 2009, the ALJ convened the preliminary hearing and jurisdiction was established. Nelco failed to appear at the preliminary hearing. The Executive Director requested that the matter be remanded to to the Executive Director so that a default order may be entered and dismissed from the SOAH Docket.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Nelco is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Nelco failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of UST systems. Specifically, Nelco failed to demonstrate acceptable financial assurance from November 19, 2002 until the date that the Facility was sold, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact No. 3.b., Nelco failed to pay UST fees for fiscal years 2001, 2002, 2003, 2004, and 2005, and above ground storage tank fees for 2003, 2004, and 2005, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and 334.128(a) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Nelco with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Nelco filed an answer to the EDPRP as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 30 TEX. ADMIN. CODE § 70.109
6. As evidenced by Finding of Fact No. 11, Nelco was provided proper notice of a preliminary hearing pursuant to TEX. GOV'T CODE § 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058 and 30 TEX. ADMIN. CODE § 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
7. As evidenced by Finding of Fact No. 12, Nelco failed to appear for the preliminary hearing. Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.056, and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Nelco and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Nelco for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

9. An administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Nelco is assessed an administrative penalty in the amount of four thousand two hundred dollars (\$4,200.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Nelco's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Nelco Distributing Company dba Nelco Corner; Docket No. 2005-1223-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further Ordered that Nelco shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Nelco shall submit payment of all outstanding fees, including any associated penalties and interest and with the notation "Nelco Distributing Company – UST Account Nos. 0021804U, 002806A, and 0021806U" to the address listed in Ordering Provision No. 1;
 - a. Within 30 days after the effective date of this Order, Nelco shall submit written certification statement demonstrating compliance with Ordering Provision 2.a. above. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
NRC Building, Suite 1200
6300 Ocean Drive, Unit 5839
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Nelco.
5. If Nelco fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Nelco's failure to comply is not a violation of this Order. Nelco shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Nelco shall notify the Executive Director within seven days after Nelco becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Nelco shall be made in writing to the Executive Director. Extensions are not effective until Nelco receives written approval from

the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Nelco if the Executive Director determines that Nelco has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Barham A. Richard. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

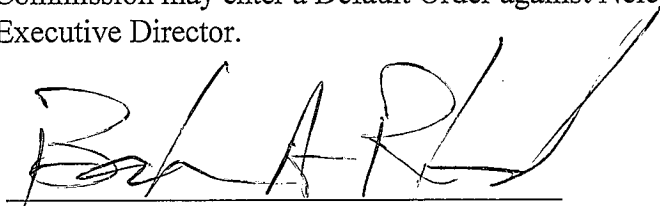
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Nelco Distributing Company dba Nelco Corner" (the "EDPRP") was filed with the Office of the Chief Clerk on December 30, 2005.

The EDPRP was mailed to Nelco at its last known address on December 30, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Nelco received notice of the EDPRP on January 3, 2006, as evidenced by the signature on the card.

Nelco filed an answer to the EDPRP on July 27, 2006, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on October 28, 2008.

Notice of a May 14, 2009 preliminary hearing was mailed by the TCEQ Chief Clerk on March 1, 2009. The Notice was sent to Nelco via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Nelco received the Notice of the Preliminary Hearing on March 20, 2009.

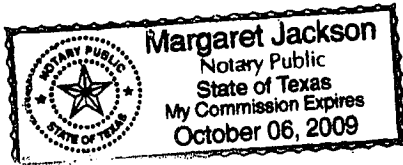
Nelco failed to appear at the preliminary hearing on May 14, 2009. At that hearing, I requested and received a finding that Nelco was served with proper notice of the hearing. I also requested and received a remand from the Administrative Law Judge pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules." Pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, and 30 TEX. ADMIN. CODE § 70.106(b), the Commission may enter a Default Order against Nelco and assess the penalty recommended by the Executive Director.

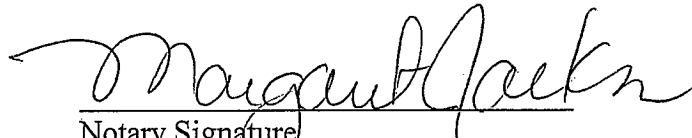
A handwritten signature in black ink, appearing to read "Barham A. Richard", is written over a horizontal line.

Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10 day of August A.D., 2009.




Notary Signature